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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/572,658	01/30/2007	Niels Raeder	P71173US0	4551

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WASHINGTON, DC 20004

EXAMINER

PRICE, CARL D

ART UNIT	PAPER NUMBER
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3749

MAIL DATE	DELIVERY MODE
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04/06/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/572,658	Applicant(s) RAEDER, NIELS	
	Examiner Carl D. Price	Art Unit 3749	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-14 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-14 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>07/24/2006</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

Applicant's arguments with respect to claims **1** and **14** have been considered but are moot in view of the new ground(s) of rejection.

Applicant has amended the claims to be of a scope not previously considered. Consistent with applicant's argument that the prior art relied on in the previous office action fail to show, disclose and/or teach certain aspects of applicant's invention now recited in the claims filed on *, applicant has amended the claims to include at least the following:

In response to the prior art of record cited in the previous examiner's action and in support of the scope of the invention now presented in the amended claims, applicant argues that the prior art of record fails to show a lighter "configured such that information provided on an information carrier arranged in the fuel tank is at first hidden by the colored fuel and is gradually made visible on use of the colored fuel."

In response to applicant's argument(s) directed to the prior art previously relied on, and in response to the scope of the invention now set forth in the presently amended claims, the following examiner's action now relies on the prior art reference of **US 4696640 (Pitchford)**. Most notably, with regard to the now claimed invention, **US 4696640 (Pitchford)** shows and discloses candle can have a strip extending along the longitudinal axis and the strip is gradually exposed as the candle burns.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986).

Accordingly, while applicant's arguments have been carefully considered, applicant's claims do not patentably distinguish applicant's invention over the prior art of record.

See the examiner's action herein below.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims Rejected under 35 U.S.C. 103(a)

Claims **1** and **3-14** are rejected under 35 U.S.C. 103(a) as being unpatentable over **US005447430 (Kim et al)** in view of **US001457811 (Baker)** or **US 1352336 (Yingst)** and **JP 03-69457** or **FR 2549937** and **US 4696640 (Pitchford)**.

US005447430 (Kim et al) shows and discloses a gas fuel lighter including:

- a transparent housing defining a liquefied gas fuel tank (14);
- a lighter head (10) with a burner device (13); and
- an ignition device (12);
- wherein the fuel is colored;
- wherein the lighter is embodied as a disposable (“throw-away”) lighter.

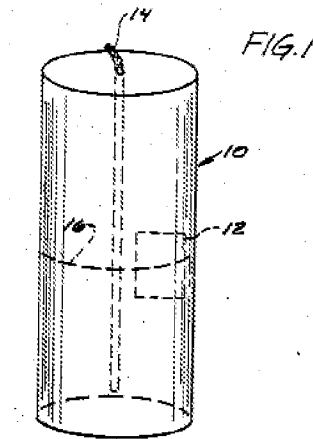
US005447430 (Kim et al) shows and discloses the invention substantially as set forth in the claims with possible exception to:

- the housing including a transparent window;
- the fuel being white gas; and
- an information carrier held in the fuel tank with the help of holding devices;
 - wherein the information carrier is plastic on which information is imprinted;
 - wherein the information carrier is plastic onto which a film carrying the information or a paper sheet carrying the information is glued;
 - the plastic part is embodied discoidally;
 - the information is an image, an advertising text, an inscription, a lot number or the like; and
 - the color of the information carrier and/or the information is coordinated with the coloring of the fuel.

US001457811 (Baker) and **US001352336 (Yingst)** teach that it is known to form containers with both a transparent container wall or wall portion as well as an information carrier located within the container to have at least a portion defining a transparent or non-colored inspection window used as an aide in determining a level of fluid within the container. Wherein the transparent inspection window is used to view information located on the information carrier. Wherein the information on the carrier is used to indicate a level of fuel within the container (see c4; **US001457811 (Baker)**), or for the purpose of conveying for example an advertisement (see 2, 3; Figure 1 of **US001352336 (Yingst)**).

FR 2549937 and **JP 03-69457** teach that it is known to form transparent plastic containers to have at least a portion defining a transparent or non-colored inspection portion used as an aide in determining a level of fluid within the container. More specifically, **FR 2549937** applies this principle to a liquid fuel gas lighter, and **JP 03-69457** applies this technique to a liquid container of general utility.

US 4696640 (Pitchford) shows and discloses a candle can have a strip extending along the longitudinal axis and the strip is gradually exposed as the candle burns. A candle made in a usual manner contains a fireproof, leak proof container, has a personalized message therein. The message may be a fortune, words of endearment, or perhaps a game token, and/or a coupon redeemable for a prize or for "cents off" a product. The prize container is initially hidden from the viewer. The candle is consumed until such time as the container or token is revealed. Alternatively, the candle can have a strip extending along the longitudinal axis and the strip is gradually exposed as the candle burns. Additional portions of a message on the strip will thus be readable as the candle burns. An elongated article comprising a message strip indicated at 30 is embedded in the candle. The strip may be exposed at the top edge as shown in FIG. 4, with the rest of the strip below the upper surface of the candle and hidden from view. As the candle burns down, for example to a dotted line level shown generally at 32, a message will be exposed. The message strip 30 is shown in FIG. 5, and can have lines of message such as that indicated at 32 that will be exposed slowly as the candle is burned.



In regard to claims 1 and 3-14, for the purpose of providing means to, for example, indicate the level of fuel within the fuel tank, or to convey a message of advertisement, it would have been obvious to a person having ordinary skill in the art to modify the liquid container of **US005447430 (Kim et al)** to include an information carrier and carrier support therein, in view of the teaching of **US001457811 (Baker)** or **US001352336 (Yingst)**. Also, in regard to claims 1-13, for the purpose of permitting at least a portion of the fuel container to be colored, it would have been obvious to a person having ordinary skill in the art to modify **US005447430 (Kim et al)** in the manner set forth in the claims, in view of the teaching of **FR 2549937** and **JP 03-69457**. Also, in regard to claims 1 and 3-14, to permit a degree of mystery and suspense that the message is unknown until such time as a message on a support uncovered, it would have been obvious to a person having ordinary skill in the art to color the fuel of **US005447430 (Kim et al)** such that the support is hidden, in view of the teaching of **US 4696640 (Pitchford)**.

In regard to claim 7, Official Notice is taken that white gas is a suitable fuel for lighter. Therefore, to modify the lighter of **US005447430 (Kim et al)** to operate with a non-pressurized fuel gas like white gas, as an alternative fuel source, would have been obvious to a person having ordinary skill in the art at the time of the invention.

I In regard to claims 9-13, Official Notice is taken that each of applicant's claimed means for applying indicia to a carrier are well known in the art of printed matter. Furthermore, the manner in which printed matter or information is applied to a carrier or substrate would necessarily depend on numerous design concerns such as the desired composition material used to form the indicia or information. Therefore, it would have been obvious to a person having

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ordinary skill in the art at the time of the invention to select known techniques for applying a given form of indicia or information to the carrier. Furthermore, whether or not the color of the information on the carrier is in some way “coordinated” with the fuel color can only be seen as a matter of choice in design in as much as applicant has not demonstrate any new or unexpected results which might be produced therefrom.

Conclusion

See the attached USPTO for, 892 for prior art made of record and not relied upon which is considered pertinent to applicant's disclosure.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

USPTO CUSTOMER CONTACT INFORMATION

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carl D. Price whose telephone number is (571) 272-4880. The examiner can normally be reached on Monday through Friday between 9:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven B. McAllister can be reached on (571) 272-6785. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Carl D. Price/

Primary Examiner, Art Unit 3749

cp